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Sent: Friday, April 30, 2021 1:11 PM

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Subject: FW: AHC memo re future development questions

Dear Councilors,

The Affordable Housing Committee has reviewed the questions from the Planning Commission to the City Council regarding future development. Our committee has approved the attached memo 6-0-0 for your consideration.

We unanimously support the option of allowing both the Traditional Neighborhood Design and Conservation PUD as vehicles for future development in the Southeast Quadrant contingent on revisions to the Conservation PUD outlined in the attached memo. We are unanimously opposed to the 'conservation only' option for future development in the Southeast Quadrant as it:

- (1) conflicts with the Comprehensive Plan and fair housing statutes,
- (2) would greatly limit new residential development, and
- (3) provides no assurance that homes developed would be affordable to households with low and moderate incomes.

Thank you,

Chris Trombly
Chair, Affordable Housing Committee

South Burlington Affordable Housing Committee

Members: Chris Trombly, Chair; Sandy Dooley, Vice Chair; Leslie Black-Plumeau; Vince Bolduc; Patrick O'Brien; and John Simson

To: Jessica Louisos, Chair, South Burlington Planning Commission (PC)
From: Chris Trombly, Chair, South Burlington Affordable Housing Committee
Date: April 27, 2021
Subject: Comments re "DRAFT Questions for Council [Follow-up to Joint PC/Council Meeting]"

First, we commend and appreciate your ongoing work to complete the major projects envisioned for the City's Interim Zoning period. **Second**, we provide context for our positions with respect to proposals to confine future residential development to infill and redevelopment and prohibit future residential development in the Southeast Quadrant (SEQ). **Third**, we describe the bases for our positions. **Fourth**, we share our comments and recommendations.

Context: Some residents propose limiting new residential development to infill and redevelopment in previously developed areas of the City, thereby prohibiting new residential development in areas considered suitable for residential development and served by existing infrastructure in the SEQ. The committee unanimously supports using infill and redevelopment as methods for new residential development in the City. However, the committee unanimously opposes prohibiting new residential development in the various areas considered suitable in the SEQ. We believe that adopting any land use regulations prohibiting new SEQ residential development contradicts goals in the South Burlington Comprehensive Plan; violates Vermont law; and disregards how zoning regulations have restricted BIPOC and lower-income households' choices regarding where they live.

Bases: As an underlying principle, the committee asks that the PC's options reflect the stated goals of the Comprehensive Plan and Vermont's "Unfair housing practices" statute (copy attached).

The Comprehensive Plan's first goal stated under the Plan's **Vision & Goals**: *Here and into the future, South Burlington is... **Affordable & Community Strong**. Creating a robust sense of place and opportunity for our residents and visitors. ♦ Be affordable, with housing for people of all incomes, lifestyles, and stages of life.* (p. 1-1). Moreover, in the Plan's Housing chapter, on page 2-10, the first key issue and need identified is: *"Preserving and promoting the development of additional housing that is affordable to households of all income levels **throughout the City**."* (Emphasis added.) Further, the Comprehensive Plan includes numerical targets for new affordable housing by 2025, which we are not on track to achieve.

The Comprehensive Plan also includes a paragraph on "**Affordable Housing in the SEQ**." (pp. 3-3233) The challenge of the high cost of SEQ land is cited as well as the fact that affordable owner homes are part of the Dorset Farms and South Village Master Plans. Two statements address the challenge of SEQ affordability: *"The SEQ Concept Plan has evaluated how increased 'buildable' densities might increase the opportunity for affordable housing as well."* (p. 3-33) *"With the completion of the SEQ planning process, there has been strong interest in building neighborhoods at higher densities in order to conserve more of the SEQ's priority open space lands."*

In addition, the Vermont statute relating to “unfair housing practices” disallows land use regulations (LDRs) that would discriminate because of (among other factors) income, or receipt of public assistance (full text attached):

“(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, **income, or because of the receipt of public assistance (emphasis added)**, or because a person is a victim of abuse, sexual assault, or stalking, except as otherwise provided by law.”

With regard to land use regulation as a vehicle for discrimination against BIPOC and lower-income households, a wide body of research documents this tragic component of our nation’s history. Notable are the book, ***The Color of Law***, and a recent New York Times op-ed, “The ‘New Redlining’ Is Deciding Who Lives in Your Neighborhood”, <https://www.nytimes.com/2021/04/19/opinion/biden-zoning-social-justice.html>. Overly restrictive land use regulations will likely perpetuate inequities among City residents. As of the latest data available, 2.5% of South Burlington’s population was Black or African-American, compared to 4.7% in Burlington and 8.1% in Winooski. Furthermore, the median household income in the SEQ is higher than any other Vermont Census tract.

Comments/Recommendations: Selection of the Conservation PUD as the only vehicle for future SEQ development is among the options in the DRAFT “Questions for Council...” document. We recommend/request removal of this option as it (1) conflicts with the Comprehensive Plan and fair housing statutes, (2) would greatly limit new residential development, and (3) provides no assurance that homes developed would be affordable to households with low and moderate incomes.

With regard to the option of allowing both the TND and Conservation PUD as vehicles for development in the SEQ, we support this option only if Conservation PUD use is limited to suitable parcels. Conservation PUDs should be limited to parcels in which no less than 63% of the parcel (excluding only land zoned NRP) comprises hazards or level I resources. Also, a minimum density requirement should apply to the 30% available for development. New PUD LDRs must balance the proposed Environmental Protection Standards, which remove 974 additional acres from potential development, rendering 50% of land in the City conserved or preserved. Also, because natural resources change, “preservation” of land in a Conservation PUD should be reviewed every 25 years, allowing the City Council to modify its status based on LDR-defined changes in the ecology of the “preserved land.”

Consequences of the option entitled “Related Consideration: Conservation” would likely be grave. The City would be supporting removal of land from availability for residential development necessary to promote the goals of the Comprehensive Plan and a more inclusive community.

In short, SEQ land use regulation that unnecessarily decreases opportunities for housing development undermines Comprehensive Plan goals and Fair Housing statutes. Instead, we should embrace this occasion to increase LDR compatibility with important and complementary Comprehensive Plan goals, combat SEQ exclusivity, and strengthen diversity, equity and opportunity in our City. Please “*carpe diem*.”

Thank you for your attention.

The Vermont Statutes Online

Title 9 : Commerce And Trade

Chapter 139 : Discrimination; Public Accommodations; Rental And Sale Of Real Estate

(Cite as: **9 V.S.A. § 4503**)

§ 4503. Unfair housing practices

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(2) To discriminate against, or to harass any person in the terms, conditions, privileges, and protections of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling or other real estate that indicates any preference, limitation, or discrimination based on race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(4) To represent to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking, that any dwelling or other real estate is not available for inspection, sale, or rental when the dwelling or real estate is in fact so available.

(5) To disclose to another person information regarding or relating to the status of a tenant or occupant as a victim of abuse, sexual assault, or stalking for the purpose or intent of:

(A) harassing or intimidating the tenant or occupant;

(B) retaliating against a tenant or occupant for exercising his or her rights;

(C) influencing or coercing a tenant or occupant to vacate the dwelling; or

(D) recovering possession of the dwelling.

(6) To discriminate against any person in the making or purchasing of loans or providing other financial assistance for real-estate-related transactions or in the selling, brokering, or appraising of residential real property, because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(7) To engage in blockbusting practices, for profit, which may include inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(8) To deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, on account of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

(9) To discriminate in the sale or rental of a dwelling because a person relies upon aids such as attendants, specially trained animals, wheelchairs, or similar appliances or devices but the owner shall not be required to modify or alter the building in any way in order to comply with this chapter. An owner shall permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications are necessary to afford the person full enjoyment of the premises. The owner may, if reasonable, require the person to agree to restore the premises to the condition that existed before the modification, reasonable wear and tear excepted, but the owner may not require an additional security deposit for this purpose.

(10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common areas.

(11) To fail to comply with provisions or rules pertaining to covered multifamily dwellings, as defined in 20 V.S.A. § 2900(4) and pursuant to 20 V.S.A. chapter 174.

(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or because of the receipt of public assistance, or because a person is a victim of abuse, sexual assault, or stalking, except as otherwise provided by law.

(b) The provisions of subsection (a) of this section with respect to discrimination in sales and rentals of dwellings on the basis of age or on the basis of a person's intention to occupy with one or more minor children shall not apply to the sale or rental of a dwelling in a housing complex:

(1) intended for, and solely occupied by, persons 62 years of age or older;

(2) intended and operated for occupancy by at least one person 55 years of age or older per unit. This subsection shall only apply if the following conditions are met:

(A) the housing complex has significant facilities and services specifically designed to meet the physical or social needs of older persons, or if it is not practicable to provide those facilities and services, that the housing complex is necessary to provide important housing opportunities for older persons;

(B) at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing complex in which first occupancy will begin after enactment of this chapter need not comply with this subsection until 25 percent of the units are occupied; and

(C) there are written and enforced policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older; or

(3) established under any federal or State program specifically designed and operated to assist elders, as defined in the federal or State program.

(c) The housing exemption in subsection (b) of this section shall not fail to apply due to persons residing in such dwellings as of July 1, 1989, who do not meet the age requirements of subsection (b) of this section, provided that new occupants of such dwellings meet the age requirements of that subsection, and that unoccupied units as of July 1, 1989 are reserved for occupancy by persons who meet the age requirements of that subsection. (Added 1987, No. 74, § 1; amended 1987, No. 253 (Adj. Sess.), § 2; 1989, No. 89, § 2; 1991, No. 135 (Adj. Sess.), § 12; 2007, No. 41, § 15; 2011, No. 137 (Adj. Sess.), § 6, eff. May 14, 2012; 2013, No. 31, § 11; 2013, No. 96 (Adj. Sess.), § 32; 2019, No. 48, § 4.)